

## Message Text

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INFO OCT-01 EA-07 IO-10 ISO-00 FEA-01 AGR-05 CEA-01

CIAE-00 COME-00 DODE-00 EB-07 FRB-03 H-02 INR-07

INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05

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FM SECSTATE WASHDC

TO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY DUBLIN

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY THE HAGUE

AMEMBASSY COPENHAGEN

USMISSION EC BRUSSELS

USDEL MTN GENEVA

AMEMBASSY OTTAWA

USMISSION GENEVA

INFO USMISSION OECD PARIS

AMEMBASSY TOKYO

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E.O. 11652: N/A

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TAGS: ETRD

SUBJECT: EC AIDE-MEMOIRE ON AUTOMOBILE ANTI-DUMPING ACTION

JEAN-PIERRE LENG OF EC DELEGATION DELIVERED FOLLOWING  
AIDE MEMOIRE ON AUTOMOBILE ANTI-DUMPING INVESTIGATION  
TO EUR/RPE ON OCTOBER 1:

1. THE EUROPEAN COMMUNITY WISH TO EXPRESS THEIR GRAVE CONCERN TO THE U.S. ADMINISTRATION OVER THE TREASURY'S CURRENT CONTINUED INVESTIGATIONS INTO ALLEGED DUMPING OF AUTOMOBILES FROM BELGIUM, FRANCE, GERMANY, ITALY AND THE UNITED KINGDOM.

2. THE SPECIFIC INTERNATIONAL COMMITMENT WHICH BINDS THE U.S., THE COMMUNITY AND THE OTHER SIGNATORIES IS THE GATT ANTI-DUMPING CODE WHICH LAYS DOWN AGREED CONDITIONS WHICH MUST BE MET BEFORE INVESTIGATIONS ARE FORMALLY UNDERTAKEN, AND IN ESSENCE REQUIREMENTS THAT NO DUTIES MAY BE IMPOSED TO CURB IMPORTS UNLESS BOTH THE FACT OF DUMPING HAS BEEN ESTABLISHED AND SUCH DUMPING HAS BEEN IDENTIFIED AS "DEMONSTRABLY THE PRINCIPAL CAUSE OF MATERIAL INJURY OR THE THREAT OF MATERIAL INJURY TO A DOMESTIC INDUSTRY". THE EUROPEAN COMMUNITY ACCORDINGLY WISH TO DRAW THE ATTENTION OF THE UNITED STATES

ADMINISTRATION TO THE CONSIDERATIONS SET OUT IN THE ANNEX TO THE PRESENT AIDE-MEMOIRE AS REGARDS COMPLIANCE WITH THE PROVISIONS OF THE CODE.

3. IN THE COMMUNITY'S VIEW, IMPORTS INTO THE UNITED STATES OF AUTOMOBILES FROM THE FIVE MEMBER COUNTRIES CONCERNED ARE REASONABLY PRICED, AND ARE MANIFESTLY NOT THE PRINCIPAL CAUSE OF MATERIAL INJURY TO THE U.S. AUTOMOBILE INDUSTRY. MOREOVER, IN A PERIOD OF FLUCTUATING EXCHANGE-RATES, THE ASSESSMENT OF DUMPING MARGINS IS BOUND TO BE PROBLEMATICAL. THE COMMUNITY DO NOT CONTEST THAT SOME PARTS OF THE U.S. AUTOMOBILE INDUSTRY ARE AT PRESENT EXPERIENCING REDUCED OUTPUT AND HIGH UNEMPLOYMENT. BUT IT IS SIGNIFICANT THAT THE SECTION OF THE U.S. INDUSTRY WITH WHICH EUROPEAN AUTOMOBILES COMPETE IS

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PROSPERING STEADILY. MOREOVER, IMPORTS OF AUTOMOBILE INTO THE UNITED STATES FROM THE COMMUNITY HAVE BEEN STABLE IN VOLUME FOR THE PAST FIVE YEARS. THE COMMUNITY HAVE NOTED THAT SPOKESMEN FROM THE U.S. INDUSTRY HAVE CONSISTENTLY REFRAINED FROM ATTRIBUTING ANY PART OF THE INDUSTRY'S CURRENT MAJOR DIFFICULTIES TO FOREIGN IMPORTS, AND THAT STAFF REPORTS FROM THE PRESIDENT'S COUNCIL ON WAGE AND PRICE STABILITY AND FROM THE U.S. DEPARTMENT

OF COMMERCE HAVE ARGUED THAT THERE IS NO REASONABLE INDICATION THAT FOREIGN IMPORTS HAVE GIVEN RISE TO INJURY.

4. THE COMMUNITY REGRET THAT THE TREASURY SHOULD HAVE UNDERTAKEN AN INVESTIGATION WITHOUT A REQUEST FROM THE INDUSTRY Affected AND UNSUPPORTED BY EVIDENCE BOTH OF DUMPING AND OF INJURY RESULTING THEREFROM. THEY FURTHER REGRET THAT IN THE ABSENCE OF ANY EVIDENCE OF MATERIAL INJURY THE I.T.C. SHOULD HAVE ADVISED THE UNITED STATES TREASURY THAT THE ANTI-DUMPING INVESTIGATION SHOULD CONTINUE. THE STANDARD OF JUSTIFICATION APPLIED BY THE I.T.C. WAS NEGATIVE, THEY MERELY DPD NOT DETERMINE THAT THERE WAS NO REASONABLE INDICATION THAT AN INDUSTRY IN THE U.S. WAS BEING INJURED BY REASON OF IMPORTS. THE COMMUNITY REGARD THIS MINIMAL JUSTIFICATION FOR CONTINUING THE INVESTIGATION AS INADEQUATE.

5. AS REGARDS THE ANTICIPATED ADVERSE EFFECTS ON THE COMMUNITY'S TRADITIONAL MARKET FOR AUTOMOBILES IN THE UNITED STATES, THE COMMUNITY WISH TO POINT OUT THAT THE PRESENT INVESTIGATION HAS ALREADY OCCASIONED HARRASSMENT AND LEGAL EXPENSE. SUBSEQUENT POSSIBLE WITHHOLDING OF CUSTOM APPRAISEMENT WOULD DISRUPT THE COMMUNITY'S AUTOMOBILE MARKET BY INTRODUCING A SUBSTANTIAL ELEMENT OF UNCERTAINTY CONCERNING PRICE. IF, AS THE COMMUNITY ARE CONFIDENT, AN EVENTUAL FINAL DETERMINATION FROM THE

INTERNATIONAL TRADE COMMISSION EXONERATES EUROPEAN IMPORTS ON THE INJURY COUNT, THE HARASSMENT, EXPENSE AND DISRUPTION WILL HAVE BEEN, IN EFFECT, WITHOUT JUSTIFICATION.

6. THE PROSPERITY AND STABILITY OF THE COMMUNITY AND OF LIMITED OFFICIAL USE

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THE UNITED STATES REQUIRE RESPECT FROM THE INTERNATIONAL RULES AND DISCIPLINES WHICH GOVERN THE ECONOMIC AND COMMERCIAL LIFE OF THE FREE WORLD. FAILURE TO RESPECT THE PROVISIONS OF THE ANTI-DUMPING CODE NOT ONLY CARRIES GRAVE IMPLICATIONS IN ITSELF, BUT ALSO CALLS INTO QUESTION THE USEFULNESS OF PURSUING FURTHER EFFORTS IN MULTILATERAL TRADE NEGOTIATIONS AIMED AT CREATING

ADDITIONAL FAIR TRADE RULES AND DISCIPLINES. THE EUROPEAN COMMUNITY CONSEQUENTLY REQUEST THE UNITED STATES ADMINISTRATION TO GIVE CAREFUL THOUGHT TO ITS INTERNATIONAL OBLIGATIONS IN THE CONDUCT OF ITS PRESENT INVESTIGATION INTO ALLEGED DUMPING AND INJURY, AND TO SEE THAT DOMESTIC LAW AND PRACTICE ARE BROUGHT RAPIDLY INTO LINE WITH THESE INTERNATIONAL OBLIGATIONS.

ANNEX

OBLIGATIONS ARISING UNDER THE GATT ANTI-DUMPPNG CODE

IN THE VIEW OF THE COMMUNITY, THE CONDUCT OF THE U.S. ADMINISTRATION'S INVESTIGATION INTO ALLEGED DUMPING IS INCONSISTENT WITH THE U.S. OBLIGATIONS UNDER THE GATT ANTI-DUMPING CODE. THE PARTICULAR MATTERS TO WHICH THE COMMUNITY WISH TO DRAW ATTENTION AT THIS STAGE ARE AS FOLLOWS:

1. ARTICLE 5(A) OF THE GATT ANTI-DUMPING CODE REQUIRES THAT AN INVESTIGATION MAY BE INITIATED ONLY IN TWO CIRCUMSTANCES. THE FIRST, OR "NORMAL", CIRCUMSTANCE IS AT THE REQUEST OF AN INDUSTRY AFFECTED, FURTHER SUPPORTED BY EVIDENCE OF BOTH DUMPING AND INJURY. NO SUCH REQUEST WAS RECEIVED FROM THE U.S. AUTOMOBILE INDUSTRY AS SUCH. THE SECOND OR "SPECIAL", CIRCUMSTANCE IN WHICH AN INVESTIGATION MAY BE INITIATED IS WHEN A GOVERNMENT, WITHOUT HAVING RECEIVED A REQUEST FROM AN INDUSTRY, IS NEVERTHELESS IN POSSESSION OF EVIDENCE BOTH ON DUMPING AND ON INJURY RESULTING THEREFROM. THESE NECESSARY PRE-CONDITIONS MANIFESTLY DID NOT BOTH EXIST, SINCE THE U.S. TREASURY STATED TO THE INTERNATIONAL TRADE COMMISSION THAT THERE WAS "SUBSTANTIAL DOUBT" AS TO LIMITED OFFICIAL USE

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INJURY, AND THE INTERNATIONAL TRADE COMMISSION'S PRELIMINARY DETERMINATION, BASED ON THE PROVISIONS OF U.S. LAW, AND NOT OF THE CODE, IN NO WAY AFFECTS THIS POSITION.

2. AS REGARDS DUMPING (L.T.F.V. SALES), ARTICLE VI OF THE GATT MAKES CLEAR THAT ANTI-DUMPING DUTIES MAY ONLY BE IMPOSED IN ORDER TO NEUTRALIZE CURRENT DUMPING MARGINS. THE CHOICE OF AN HISTORICAL REFERENCE PERIOD FOR U.S. L.T.F.V. INVESTIGATIONS IN A SITUATION OF FLUCTUATING EXCHANGE RATES WOULD NOT PROVIDE AN ACCEPTABLE BASIS FOR THE PURPOSE OF ASSESSING DUMPING MARGINS.

3. ARTICLE 3 (D) OF THE CODE PRESCRIBES THAT INJURY DUE TO DUMPED IMPORTS SHALL BE ASSESSED IN RELATION TO THE DOMESTIC PRODUCTION OF THE LIKE PRODUCT WHEN AVAILABLE DATA PERMIT A SEPARATE IDENTIFICATION OF ITS PRODUCTION. SUCH PRODUCTION DATA FOR SMALL CARS ARE AVAILABLE. ALTHOUGH THE U.S. AUTOMOBILE INDUSTRY IN GENERAL IS CURRENTLY EXPERIENCING DIFFICULTIES, SMALL CAR PRODUCTION IS PROSPERING STEADILY.

4. ARTICLE 3(A) OF THE CODE MAKES IT CLEAR THAT THE

AUTHORITIES CONCERNED MUST BE SATISFIED THAT DUMPED IMPORTS ARE "DEMONSTRABLY THE PRINCIPAL CAUSE OF MATERIAL INJURY OR OF THREAT OF MATERIAL INJURY", AND WEIGH HEAVIER THAN "ALL OTHER FACTORS TAKEN TOGETHER WHICH MAY BE ADVERSELY AFFECTING THE INDUSTRY". NO SUCH DEMONSTRATION HAS YET BEEN MADE UNDER THE PROCEDURES PURSUANT TO THE PRESENT INVESTIGATION. ON THE CONTRARY, THEY SHOW THAT THERE ARE A SERIES OF FACTORS OTHER THAN IMPORTS WHICH ARE ADVERSELY AFFECTING THE SITUATION OF THE U.S. AUTOMOBILE INDUSTRY, SUCH AS THE ECONOMIC RECESSION, THE ENERGY CRISIS, THE CONSEQUENT NEED FOR FUEL-EFFICIENT CHANGES IN CONSUMER DEMAND.

5. ARTICLE 5(B) OF THE GATT CODE REQUIRES THAT, UPON THE INITIATION OF AN INVESTIGATION AND THEREAFTER, "THE EVIDENCE OF BOTH DUMPING AND INJURY SHOULD BE CONSIDERED SIMULTANEOUSLY". UNTIL SUCH TIME AS THE ITC MAY BE CALLED UPON TO PREPARE A FINAL DETERMINATION ON INJURY, THE INVESTIGATIONS OF THE U.S. AUTHORITIES WILL, LIMITED OFFICIAL USE

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UNDER U.S. LAW, APPARENTLY INEVITABLY BE DIRECTED AT DUMPING ONLY. THE ABSENCE OF SIMULTANEITY IN THIS RESPECT WILL CONTINUE FOR A PERIOD OF BETWEEN FIVE AND EIGHT MONTHS. KISSINGER

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